

RESTORATION OF COASTWISE TRADING PRIVILEGES TO THE VESSEL "ENDLESS SUMMER"

NOVEMBER 9, 1983.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries, submitted the following

REPORT

[To accompany S. 1689]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 1689) to clear certain impediments to the licensing of the vessel *Endless Summer* for employment in the coastwise trade, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and substitute:

That, notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating shall cause the vessel ENDLESS SUMMER, official number 296259, owned by the Commonwealth of Virginia, to be documented as a vessel of the United States with the privilege of engaging in the coastwise trade, on compliance with all other requirements of law.

Sec. 2. (a) Section 8101(g) of title 46, United States Code, is amended by striking "or part B of this subtitle applies" and substituting "applies or which is subject to inspection under chapter 33 of this title".

(b) Section 8301(a) of title 46, United States Code, is amended by—

(1) after "lakes" inserting "(except the Great Lakes)";

and

(2) striking "to which part B of this subtitle applies" and inserting "subject to inspection under chapter 33 of this title".

(c) Section 8301(a)(1) of title 46, United States Code, is amended by inserting "propelled by machinery or carrying passengers" after "vessels"

(d) The analysis of chapter 85 of title 46, United States Code, is amended by adding:

"§ 8503. Federal pilots authorized."

(e) Section 8501(a) of title 46, United States Code, is amended by striking "part," and substituting "subtitle,".

(f) Chapter 85 of title 46, United States Code, is amended by adding the following new section:

“§ 8503. Federal pilots authorized

“(a) The Secretary may require a pilot licensed under section 7101 of this title on a self-propelled vessel when a pilot is not required by State law and the vessel is—

“(1) engaged in foreign commerce; and

“(2) operating on the navigable waters of the United States.

“(b) A requirement, prescribed under subsection (a) of this section is terminated when the State having jurisdiction over the area involved—

“(1) establishes a requirement for a State licensed pilot; and

“(2) notifies the Secretary of that fact.

“(c) For the Saint Lawrence Seaway, the Secretary may not delegate the authority under this section to an agency except the Saint Lawrence Seaway Development Corporation.

“(d) A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than \$25,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

“(e) A person that willfully and knowingly violates this section or a regulation prescribed under this section shall be fined not more than \$50,000, imprisoned for not more than 5 years, or both.”.

(g) Section 7 of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1226), is repealed.

PURPOSE OF THE LEGISLATION

S. 1689, as reported, will restore coastwise trading privileges to the vessel *Endless Summer*.

BACKGROUND AND DISCUSSION

The *Endless Summer*, official number 296259, a vessel of 45 gross tons and 57 feet in length; was built at Thomaston, Maine, in 1964; is owned by the Commonwealth of Virginia; and is documented as a pleasure vessel. The vessel was seized in Gloucester County, Va., waters by agents of the Coast Guard, the Federal Drug Enforcement Administration, and the Virginia State Police. At the time of seizure, the unoccupied vessel was loaded with approximately 13,700 pounds of marijuana. Federal authorities, after having had custody of the vessel for about 6 weeks, transferred custody to the Commonwealth of Virginia for sale or other disposition.

The vessel was eventually sold at public auction on March 16, 1983, for \$67,000. Subsequently, it was discovered that the Commonwealth could not convey the vessel with a clear and unrestricted title, and the sale was rescinded by court order. Since the vessel had once been owned by a British entity, it lost its coastwise trading privileges pursuant to section 27 of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883).

Since the loss of coastwise trading privileges is a matter of law, these privileges can only be restored by private legislation like S. 1689. A companion bill, H.R. 3854, has been introduced by the Honorable Herbert H. Bateman.

COMMITTEE ACTION

S. 1689 was passed by the Senate on August 4, 1983 and will permit the U.S.-built vessel, *Endless Summer*, that has a defect in the chain of title, to engage in the coastwise trade. The bill was referred to the Committee on Merchant Marine and Fisheries and subsequently

referred to the Subcommittee on Merchant Marine for consideration. A hearing and subcommittee markup were held on November 2, 1983. The Department of Transportation opposed the bill, absent a showing of factual circumstances which present compelling reasons to exempt the vessel from application of the coastwise trading laws. All other testimony and letters received for the record were in support of the legislation.

While restrictions on coastwise trading privileges should not be removed through routine enactment of private bills, there are times when there is a compelling need to prevent an inequitable result or to advance the public interest.

In this case, the present owner of the vessel, the Commonwealth of Virginia, accepted custody from Federal law enforcement authorities, as a convenience to the Federal Government, for sale or other disposition. At that time, the Commonwealth of Virginia was not aware of any impediments in the chain of title that would prevent the sale of the vessel for its true value, nor were they aware of the fact that a one-time foreign ownership of a U.S.-built vessel would prohibit operations in our domestic protected trade. Further, since the vessel has been in custody, the Commonwealth has suffered and continues to suffer extraordinary expenses for storage, maintenance, and care. In light of the obvious financial hardship to the Commonwealth, the committee believes that these circumstances provide compelling reasons for removing the restrictions on coastwise trading privileges for this vessel.

The Committee wishes to make it clear that the bill only restores coastwise trading privileges and does not exempt the vessel from other applicable provisions of law, such as those pertaining to inspection, certification, and manning. The committee adopted a technical and clarifying amendment.

The committee also adopted a number of technical and conforming amendments to correct some inadvertent errors in the recent enactment that codified the maritime safety parts of title 46 of the U.S. Code, Public Law 98-89, dated August 26, 1983.

Section 8101(g) provides a penalty for failure to employ certain individuals and was inadvertently made applicable to uninspected and pleasure vessels.

Section 8301 provides for minimum engagement requirements for licensed individuals on certain types and sizes of vessels and was inadvertently made applicable to uninspected and pleasure vessels.

Section 8503 contains provisions of existing law that are being relocated from title 33 so that all of the laws regulating pilots will be found in chapter 85 of title 46.

On November 9, 1983, the Committee on Merchant Marine and Fisheries considered the bill and endorsed the subcommittee's action. S. 1689, as amended, was ordered reported to the House by unanimous voice vote.

SECTION-BY-SECTION ANALYSIS

The bill consists of section 1 that provides that, notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the vessel, *Endless Summer*, may engage in the coastwise trade. It removes

the cloud on the chain of title that prevents the vessel from engaging in the coastwise trade. It does not exempt the vessel from compliance with any other navigation or safety law.

Section 2 makes a number of technical and conforming amendments to the recently enacted law that codified the marine safety laws in the title 46 of the U.S. Code (Public Law 98-89).

COST OF LEGISLATION

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the committee estimates that the legislation will result in no additional cost to the Government. The committee has received no different estimate of costs from any affected executive department.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of rule XI of the Rules of the House of Representatives, the committee has concluded that enactment of S. 1689 would have no significant inflationary impact on prices and costs in the operation of the national economy.

COMPLIANCE WITH CLAUSE 2(1) (3) OF RULE XI

With respect to the requirements of clause 2(1) (3) of rule XI of the Rules of the House of Representatives:

(a) No oversight hearings were held on the subject matter of this bill during this session of Congress.

(b) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation in that it does not provide new budget authority or new or increased tax expenditures.

(c) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 4(c) (2) of rule X.

(d) An estimate and comparison of costs for S. 1689 has been received by the committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, and follows herewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 9, 1983.

HON. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1689, an act to clear certain impediments to the licensing of the vessel *Endless Summer* for employment in the coastwise trade, as ordered reported by the House Committee on Merchant Marine and Fisheries, November 9, 1983.

We expect that enactment of this bill would result in no additional cost to federal, state, or local governments. This bill directs the Secre-

tary of the department in which the United States Coast Guard is operating to document the vessel *Endless Summer* as a vessel of the United States, with coastwise trading privileges. The bill also makes technical amendments to the United States Code to correct errors which were made in recodifying title 46.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

DEPARTMENTAL REPORTS

S. 1689 was the subject of a report from the Department of Transportation, which has primary jurisdiction over the subject matter. The report follows herewith:

STATEMENT FOR THE RECORD OF ADM. HAROLD E. SHEAR, MARITIME ADMINISTRATOR, DEPARTMENT OF TRANSPORTA- TION WITH RESPECT TO S. 1015, S. 1186, AND S. 1689— NOVEMBER 2, 1983

Mr. Chairman and Members of the Subcommittee on Merchant Marine. My name is Harold E. Shear, and I am the Maritime Administrator of the Department of Transportation.

It is a pleasure for me to present the views of the administration with respect to S. 1015, S. 1186 and S. 1689, three bills that would direct the U.S. Coast Guard, upon compliance with the usual requirements, to document the vessels *La Jolie*, *Dad's Pad*, and *Endless Summer*, as vessels of the United States with the privilege of engaging in the coastwise trade. We assume that these bills do not intend to waive applicable inspection, certification, or manning requirements. S. 1015 would provide for the vessel *La Jolie*, S. 1186 concerns the vessel *Dad's Pad*, and S. 1689 names the vessel *Endless Summer*. These bills passed the Senate on August 4, 1983.

Our coastwise laws require that the waterborne transportation of merchandise and passengers between two points in the United States shall be in vessels constructed in the United States, documented under the U.S.-flag, and owned by citizens of the United States. (46 App. U.S.C. 289, 883.) Coastwise trading restrictions have been enacted since the founding of the Republic in order to protect and foster the U.S. maritime industry, and this Department has consistently opposed any routine relaxation of this longstanding policy. In this regard, Secretary Elizabeth Dole reaffirmed the sanctity of the so-called Jones Act just a few weeks ago.

The vessel *Dad's Pad*, 32 net tons, official No. 549526, was constructed in 1972 at High Point, N.C. The vessel *Endless Summer*, 37 net tons, official No. 296259, was constructed in

1964 at Thomaston, Maine. Finally, the vessel *La Jolie*, 5 net tons, was constructed in 1979 in Florida. The *La Jolie* was never documented, and currently has Michigan registration No. MC 2780 LB. These U.S.-constructed vessels subsequently lost coastwise trading privileges because of foreign ownership. The proposed legislation before the subcommittee would generally restore these privileges.

The Department of Transportation opposes the enactment of S. 1015, S. 1183, and S. 1689, absent a showing of factual circumstances with respect to each of these small vessels which present compelling reasons to exempt them from the application of the coastwise laws.

Thank you.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic*, existing law in which no change is proposed is shown in roman, and existing law proposed to be omitted is enclosed in black brackets).

Section 8101(g) of Title 46 United States Code

(97 Stat. 548)

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel to which this part **[or part B of this subtitle applies]** *applies or which is subject to inspection under chapter 33 of this title* if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than \$500. Each day of a continuing violation is a separate offense.

Section 8301(a) of Title 46 United States Code

(97 Stat. 550)

§ 8301. Minimum number of licensed individuals

(a) Except as provided in chapter 89 of this title and except for a vessel operating only on rivers, harbors, lakes (*except the Great Lakes*), bays, sounds, bayous, and canals, a vessel **[to which part B of this subtitle applies]** *subject to inspection under chapter 33 of this title* shall engage a minimum of licensed individuals as follows:

(1) Each of those vessels *propelled by machinery or carrying passengers* shall have a licensed master.

Analysis of Chapter 85—Pilots of Title 46 United States Code

(97 Stat. 553)

CHAPTER 85—PILOTS

Sec.

8501. State regulation of pilots.

8502. Federal pilots required.

8503. *Federal pilots authorized.*

Section 8501(a) of Title 46 United States Code

§ 8501. State regulation of pilots

(a) Except as otherwise provided in this **【part,】** *subtitle*, pilots in the bays, rivers, harbors, and ports of the United States shall be regulated in conformity with the laws of the States.

Section 8503 of Title 46 United States Code

§ 8503. *Federal pilots authorized*

(a) *The Secretary may require a pilot licensed under section 7101 of this title on a self-propelled vessel when a pilot is not required by State law and the vessel is—*

- (1) engaged in foreign commerce; and*
- (2) operating on the navigable waters of the United States.*

(b) *A requirement prescribed under subsection (a) of this section is terminated when the State having jurisdiction over the area involved—*

- (1) establishes a requirement for a State licensed pilot; and*
- (2) notifies the Secretary of that fact.*

(c) *For the Saint Lawrence Seaway, the Secretary may not delegate the authority under this section to an agency except the Saint Lawrence Seaway Development Corporation.*

(d) *A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than \$25,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.*

(e) *A person that willfully and knowingly violates this section or a regulation prescribed under this section shall be fined not more than \$50,000, imprisoned for not more than 5 years, or both.*

SECTION 7 OF THE PORTS AND WATERWAYS ACT OF 1972

(92 Stat. 1475, 33 U.S.C. 1226)

【SEC. 7. Pilotage.

【The Secretary may require federally licensed pilots on any self-propelled vessel, foreign or domestic, engaged in the foreign trade, when operating in the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by State law. Any such requirement shall be terminated when the State having jurisdiction over the area involved establishes a requirement for a State licensed pilot and has so notified the Secretary.**】**

